IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 9522 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBABHIA BECHARBHAI RAKHOLIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9522 of 1993

NOTICE SERVED for Petitioner No. 1-3

MR MENGDE, A.G.P. for Respondent No. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/08/2003

ORAL JUDGEMENT

1. The petitioners are the agriculturists within the meaning of Section 2(6) of the Bombay Tenancy & Agricultural Lands Act, 1948. By way of this petition they have challenged the impugned order dated 6.9.1993 passed by the Secretary, Revenue Department, State of Gujarat, rejecting the Revision Application, preferred

against the impugned order dated 28.6.1991. They have also challenged the impugned order dated 23.5.1991 passed by the Dy. Collector, Rajpipla cancelling the Entry No.683 mutated in their names in the record of right on the basis of the petitioner having purchased the land and carrying on agricultural activity out-side the periphery of 8 k.mtrs. from the land in question. The Collector, Bharuch, confirmed the same by his order dated 12.3.1992. All these orders are challenged in this petition.

2. The entry was mutated way back on 18.4.1985 in the name of the petitioners. They have purchased the land in question under valid Sale Deed for Rs.49,000/-. The Mamlatdar (Records of Right), Bharuch, initiated proceeding for cancellation of the entry in 1990 i.e. after a period of almost 5 years, on the ground that they do not possess any agricultural land within the radius of 8 K.mtrs. from village Kambodia. After hearing the petitioner the entry was cancelled, against which the appeal was filed which was dismissed by the Collector and the Revision filed before the State Government against the order of Collector was also dismissed.

3. During the pendency and final disposal the State Government has removed the requirement of land within 8 k.mtrs. radius. Under the interim order of the Court they are in possession of the land.

4. After elevation of the Counsel for the petitioner Notice was duly served upon the petitioners, but the poor agriculturists have not engaged any Counsel, though they are served with the Notice of this Court.

5. In view of the above, I have heard learned A.G.P. Shri Mengde. Shri Mengde was not in a position to dispute the fact that during the pendency of this petition the Government has removed the requirement of land within the radius of 8 k.mtrs. That apart, there was gross delay on the part of the Mamlatdar in initiating the proceeding of cancellation. Therefore, on peculiar facts of this case, all the impugned orders Annexures : A, B & C are required to be quashed and set aside and accordingly they are quashed and set aside. Rule is made absolute with no order as to costs.

Date : August 18, 2003 (B.J.Shethna, J.)

sas